ITEM 996-B

Y 1.1/4:97-11

97TH CONGRESS
1st Session

SENATE

TREATY DOC.
No. 97-11

MUTUAL LEGAL ASSISTANCE TREATY WITH THE REPUBLIC OF COLOMBIA

ORIGINAL

COMPLETED

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY ON MUTUAL LEGAL ASSISTANCE BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF COLOMBIA, SIGNED AT WASHINGTON ON AUGUST 20, 1980

JUNE 11, 1981.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

79-118 O WASHINGTON: 1981

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 11, 1981.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty on Mutual Legal Assistance between the United States of America and the Republic of Colombia, together with a related exchange of notes, signed at Washington on August 20, 1980.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the treaty.

The treaty is one of a series of modern mutual assistance treaties being negotiated by the United States. The treaty is self-executing and utilizes existing statutory authority.

The new treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the treaty includes: (1) executing requests relating to criminal matters; (2) taking of testimony or statements of persons; (3) effecting the production, preservation, and authentication of documents, records, or articles of evidence; (4) returning to the requesting Party any objects, articles, or other property or assets belonging to it or obtained by an accused through offenses; (5) serving judicial documents, writs, summonses, records of judicial verdicts, and court judgments or decisions; (6) effecting the appearance of a witness or expert before a court of the requesting Party; (7) locating persons; and (8) providing judicial records, evidence, and information.

I recommend that the Senate give early and favorable consideration to the treaty and give its advice and consent to ratification.

RONALD REAGAN.

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LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 9, 1981.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty on Mutual Legal Assistance between the United States of America and the Republic of Colombia, signed at Washington on August 20, 1980. I recommend that the treaty be transmitted to the Senate for its advice and consent to ratification.

The treaty covers mutual assistance in criminal matters. It is only the third agreement on this subject which the United States has signed, the others being the Treaty on Mutual Assistance in Criminal Matters between the United States and Switzerland, and the Treaty on Extradition and Mutual Assistance in Criminal Matters between the United States and Turkey. The treaty contains many provisions similar to those in the other treaties as well as some innovations.

The treaty will not require implementing legislation, and will utilize existing authority of the Federal courts, particularly 28 U.S.C. 1782.

Article 1 provides for assistance in any kind of government investigation or proceeding—criminal, civil, or administrative. The treaty thus permits mutual assistance at the investigatory stage, such as grand jury proceedings, as well as at the trial stage.

Article 2 of the treaty provides that the Attorney General in each country shall act as a "Central Authority" for transmission, reception, and handling of requests under the treaty. Requests approved by the Central Authority of the requesting State are made by that Authority on behalf of Federal and State agencies, courts, and other authorities in that State.

Article 3 first states what information must be included in each request for assistance and then states what information should be provided "to the extent necessary and possible." There is no requirement under the treaty that a request be legalized or certified.

Article 4 assures each contracting Party that the other will promptly undertake diligent efforts to execute a properly formulated request. The requested Central Authority will review the request and immediately notify the Central Authority of the requesting State if it is of the opinion that the request does not comply with the provisions of the treaty.

Article 5 specifies instances in which assistance may be refused under the treaty. For example, Article 5(1)(a) permits refusal where assistance would adversely affect the security of the requested State. This includes cases where assistance would involve the disclosure of information which is classified for national security reasons.

Article 6 provides that after the request is executed all documents, records, or testimony obtained shall be promptly delivered to the requesting State, along with the original request.

Article 7 of the treaty establishes the basic principle that, upon application of the requested State, the requesting State must assume all costs incurred in execution of a request, above and beyond costs of salaried employees of the requested State.

Article 8 provides that information or evidence sought under the treaty will not be used for any purpose other than that stated in the request without the consent of the Central Authority of the requested State.

The treaty permits the State from which evidence is requested to provide the evidence on the condition that it be kept confidential.

Article 9 requires the requested State to compel the furnishing of any testimony or producing of any other evidence "to the same extent as in similar investigations or proceedings" in that State.

Article 10 obligates the requested State to invite witnesses needed in the requesting State to appear in person in that State if at all possible. The requesting State would be expected to pay the expenses of such an appearance.

Article 11 addresses a need which has arisen in several recent criminal cases for the testimony at the trial of a witness serving a sentence in another country. It provides a formalized framework for this situation.

Article 12 provides that persons in custody in connection with a criminal case in the United States may travel to Colombia, or vice versa, to be present at the deposition of a prosecution witness. This article guarantees that such persons would be kept in custody pending the taking of testimony or other proceedings.

Article 13 provides that a person appearing as a witness before an authority in the requesting State pursuant to a treaty request shall not be subject to prosecution, detention, or service of civil process with respect to any act or conviction preceding departure from the requested State.

Article 14 obliges each contracting Party to furnish records or other forms of evidence to the other "on the same conditions and to the same extent as it would be available to its own authorities in similar investigations, proceedings, or trials." This obligation is consistent with the treaty's basic requirement that the requested State follow the same practices and procedures in executing a request for assistance as it normally follows in domestic investigations or proceedings of similar gravity.

As the exchange of notes accompanying the treaty indicates, the United States and Colombia each intend to use the discretion to deny government records sparingly, in keeping with the overall purpose of the treaty to afford assistance whenever possible.

Article 15 creates a formal framework for handling requests involving the searching for, securing, and returning of objects located in the requested State for use as evidence in the requesting State.

Article 16 requires that all objects or documents furnished under the treaty must be returned to the requested State as soon as possible. The requested State may waive this right, although obviously it will not do so when prohibited by its domestic legislation, or where the rights of third Parties may be violated.

Article 17 provides for ascertaining the whereabouts in the requested State of persons, such as witnesses and experts, when their whereabouts is of importance to the requesting State in connection with an investigation or proceeding covered by the treaty.

Article 18 of the treaty addresses situations where a judge is obliged to examine the scene of a crime or inspect an object or person connected with litigation. For example, the Central Authority in Colombia may request that a judge or other official in the United States perform the inspection on behalf of the Colombian official who would otherwise have to travel to the United States personally.

Article 19 of the treaty creates an obligation on the part of the Central Authority of the requested State to effect service of a summons, complaint, subpoena, or other legal document of any kind at the request of the Central Authority of the other State.

Article 20 is designed to increase the useability of evidence obtained under the provision of the treaty by eliminating certain formal or technical objections to admissibility.

Article 21 stipulates that assistance and procedures provided by this treaty shall not prevent or restrict assistance available under any other convention or agreement between the United States and Colombia, or under any informal arrangements between agencies in the two countries.

Article 22 provides that the treaty shall enter into force on the date of the exchange of instruments of ratification and shall remain in force indefinitely. Article 22 further provides that either Party may terminate the treaty by notice to the other Party, with termination to take effect six months after receipt of the notice.

The Department of Justice joins the Department of State in favoring approval of this treaty by the Senate at an early date.

Respectfully submitted,

WILLIAM CLARK.

Mutual Legal Assistance Treaty Between the United States of America and the Republic of Colombia

The Government of the United States of America and the Government of the Republic of Colombia,

Desiring to provide for more effective cooperation between the two States in the repression of crime; and

Desiring to conclude a Treaty on Mutual Legal Assistance in criminal, civil, and administrative matters;

Have agreed as follows:

ARTICLE 1

Obligations and Scope

1. The Contracting Parties agree to provide mutual assistance, in accordance with the provisions of this Treaty, in criminal, civil, and administrative investigations and proceedings.

2. Assistance shall include, but shall not be limited to:

a. Taking the testimony or statements of persons, including the statements of experts and the examination of persons accused of a crime;

b. Effecting the appearance in the Requesting State of persons located in the Requested State;

c. Transferring prisoners for testimonial purposes;

d. Producing, preserving, and authenticating records, documents, instruments, or objects of evidence of any type;

e. Effecting the seizure and the return to the Requesting State of objects;

f. Locating persons;

g. Examining and inspecting persons, objects, or sites; and

h. Serving legal documents and notification of official acts.

3. Assistance pursuant to this Treaty shall be rendered, even when the act under investigation is not an offense in the Requested State, or is not regulated by its laws.

4. This Treaty is designed solely for mutual assistance between the Contracting Parties and is not intended or designed to provide such assistance to private parties.

5. No private party may invoke the provisions of this Treaty to challenge evidence obtained thereunder, or to impede the execution of a request.

Handling of the Request

ARTICLE 2

Central Authorities

1. Requests for assistance shall be handled by a Central Authority in each Contracting Party. For the United States of America, the

Central Authority shall be the Attorney General of the United States. For Colombia, the Central Authority shall be the Procurador General de la Nacion. The Central Authority of either Contracting Party may name a designee to handle a particular request for assistance, or a particular class of requests for assistance.

2. The Central Authorities of the two States may communicate directly with each other for the purpose of carrying out the provisions of this Treaty.

ARTICLE 3

Content of the Request

1. A request for assistance shall contain:

a. The name of the authority conducting the investigation or proceeding to which the request relates;

b. The subject matter and nature of the investigation, trial, or proceeding;

c. A description of the evidence or information sought, or the acts to be performed;

d. The purpose for which the evidence or information is sought, or for which the acts are to be performed; and

e. A description of any particular procedure to be followed in executing the request.

2. To the extent necessary and possible, these requests shall also contain:

a. The full name, address, and other information concerning the person or persons who, at the time the request is made, are the subjects of the investigation, trial or proceedings, and any information concerning other persons who are likely to be affected by the request;

b. The full name, address, and other information which may aid in the identification of the person or persons from whom evidence is sought;

c. A description of the manner in which the information, statement, or testimony sought is to be recorded;

d. A description of the documents, records, or articles of evidence to be produced or preserved as well as the identity of the person to be asked to produce them and the form in which they should be produced and authenticated; and

e. A description of the type and amount of expenses which the Requesting State is willing to assume in the execution of the request.

3. Requests shall be translated into the language of the Requested State.

ARTICLE 4

Execution of the Request

1. The Central Authority of the Requested State shall promptly comply with the request, or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent judicial officials and other officials of the Requested State shall do everything in their

power to execute the request. Where this requires judicial or administrative action, the request shall be presented to the appropriate authority by the attorneys designated by the Central Authority of the Requested State, at no expense to the Requesting State. The competent judicial officials of the Requested State shall have the power to issue subpoenas, search warrants, and other processes necessary in the execution of requests by the Central Authority of the Requesting State.

2. Requests shall be executed according to the laws of the Requested State. When the request specifies a particular procedure, that procedure shall be followed unless specifically prohibited by the law of the Requested State.

3. Execution of a request for assistance may be postponed or made subject to conditions to be agreed upon by the Contracting Parties, if execution would interfere with an ongoing investigation or legal proceeding in the Requested State.

4. If the Central Authority of the Requested State considers that a request does not comply with the provisions of this Treaty, or cannot be executed for any other reason, it shall immediately so advise the Central Authority of the Requesting State, specifying the objections to the request.

ARTICLE 5

Limitations on Assistance

1. Execution of a request may be refused to the extent that it:

a. Would prejudice the security of the Requested State;

b. Relates to a matter considered a political offense by the Requested State; or

c. Relates to a matter considered purely a military offense by the Requested State.

2. Before refusing the execution of any request pursuant to this Article, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. Such conditions shall be complied with by the Requesting State.

ARTICLE 6

Return of Request

1. After execution of a request, the Central Authority of the Requested State shall return the original request to the Central Authority of the Requesting State with all information and evidence obtained, and shall indicate the time and place of execution. Whenever any request for assistance under this Treaty cannot be fully executed, the appropriate explanation shall also be included.

2. All information and evidence to be furnished pursuant to a request under this Treaty shall be presented in complete form. Upon application of the Requested State, testimony and minutes shall be transcribed verbatim, and, to the extent possible, documents and other records shall be furnished in original form.

3. Translation of documents, records, or testimony shall be the responsibility of the Requesting State.

ARTICLE 7

Cost of Assistance

The Requesting State, upon application, shall pay or reimburse the following expenses: cost of attendance of witnesses; cost of stenographic reporters, interpreters, translators, and experts specified in the request, unless such persons are salaried government employees; fees of private counsel appointed with the approval of the Requesting State; expenses incurred in transferring a person in custody; and any other expenses associated with the execution of a request.

ARTICLE 8

Limitations on Use

1. The Requesting State shall not use any information or evidence obtained under this Treaty, nor any information derived therefrom, for purposes other than those stated in the request without the prior consent of the Requested State.

2. When necessary, the Requested State may require that information or evidence furnished, and information derived therefrom, be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions except to the extent that the information or evidence is needed in a public trial resulting from the investigation or proceeding described in the request.

SPECIAL PROVISIONS REGARDING TESTIMONY

ARTICLE 9

Testimony in the Requested State

1. Upon a request that a person be summoned to give testimony, provide information, or produce documents, records, or other articles of evidence in the Requested State, that person shall be compelled to do so to the same extent as in similar investigations or proceedings in the Requested State. Such person may not be so compelled if under the law of the Requested State he has a privilege to refuse.

2. The Requested State shall state the place and date of the taking of the testimony. The authority executing the request shall permit the accused, his counsel, or any other person specified in the request to be present at the taking of testimony and to pose questions to the witness. For this purpose, it shall be the obligation of the Requesting State to notify interested parties of proceedings under this Article.

ARTICLE 10

Testimony in the Requesting State

When the appearance of a person who is in the Requested State is needed in the Requesting State, the Central Authority of the Requested State shall invite the individual to appear in person before

the appropriate authority in the other State, and shall indicate the extent to which the expenses will be paid. The response of the person shall be communicated promptly to the Requesting State.

ARTICLE 11

Transfer to the Requesting State of Persons in Custody

1. When a person in custody in the Requested State is needed as a witness in the Requesting State, the Requested State shall authorize the transfer of the person to the other State to appear before the appropriate authorities in that State if:

a. The person consents;

b. The Central Authority of the Requested State determines that there are no important reasons to oppose the transfer; and

c. The promptest possible return of the person is assured.

2. The Requesting State shall have the authority and the obligation to keep the person transferred pursuant to this Article in custody unless the Requested State authorizes his release. The Requesting State shall return the person to the custody of the Requested State at the conclusion of the proceedings for which the transfer was requested, or as otherwise agreed. The return to the Requested State of a person transferred pursuant to this Article shall not require extradition proceedings.

3. The return of a person transferred pursuant to this Article shall not be refused by the Requesting State solely because such person is a national of that State.

ARTICLE 12

Transfer to the Requested State of Persons in Custody

1. When the Requesting State requires the transfer to the other State of a person in custody for purposes of confrontation, the request shall so state. Upon transfer, the Requested State shall hold that person in custody, unless the Requesting State authorizes his release. The Requested State shall return the person to the custody of the Requesting State as soon as circumstances permit it, unless otherwise agreed.

2. The return to the Requesting State of a person transferred pursuant to this Article shall not require extradition proceedings.

3. The return of a person transferred pursuant to this Article shall not be refused by the Requested State solely because such person is a national of that State.

ARTICLE 13

Safe Conduct

1. A person appearing before an authority in the Requesting State pursuant to this Treaty shall not be subject to suit, detention, or any restriction of personal liberty, by reason of any act or conviction which proceeded his departure from the Requested State, except as provided by Article 11.

2. The guarantee provided in this Article shall cease if ten days after the person appearing has been officially notified that his appearance is no longer required he has not left the Requesting State or, having left, has returned.

Special Provisions Regarding Records and Other Objects of Evidence

ARTICLE 14

Records

1. Upon a request for the production of any record, the Requested State shall furnish it on the same conditions and to the same extent as it would be available to its own authorities in similar investigations, proceedings, or trials. However, a record which is in the possession of a government agency in the Requested State and which is not available to the public shall be furnished only if that State deems it appropriate.

2. The official executing the request shall certify the authenticity of the record. The name and official position of the official executing the request shall be certified by the Central Authority of the Requested State, or by a diplomatic or consular officer of either the Requesting State or the Requested State. The certification shall be transmitted to the Requesting State with the record.

ARTICLE 15

Searches and Seizures

1. A request that any object be searched for, seized, and delivered to the Requesting State shall be carried out only if the request contains such information as would justify that action under the law of the Requested State.

2. The Central Authority of the Requested State shall maintain a record of all objects seized or delivered to the other Contracting Party under this Article.

3. The Requested State shall implement all measures necessary for the preservation of the object between seizure and delivery to the Requesting State. The official transmitting it shall certify whether the object is in the same condition as when it was seized, and shall describe the measures taken to preserve it in that State. The name and official position of the official executing the request shall be certified in the manner provided in Article 14.

ARTICLE 16

Return of Documents, Records and Objects

The documents(records or objects furnished in execution of requests shall be returned by the Requesting State to the Requested State as soon as possible unless the Requested State waives this right.

Special Provisions Regarding Other Kinds of Assistance

ARTICLE 17

Location of Persons

If information is requested on the location of persons who might be in the Requested State, that State shall make thorough efforts to locate these persons and shall communicate the results to the Requesting State as soon as possible.

ARTICLE 18

Examinations and Inspections

Either Contracting Party may request that an appropriate official of the other identify, examine, or inspect persons, objects, or sites in the Requested State. The request should contain the information necessary to justify such action. The results of the examination or inspection shall be recorded and authenticated in the manner provided in Article 14 of this Treaty.

ARTICLE 19

Service of Legal Documents and Notification of Official Acts

The Central Authority of the Requested State shall cause service of any document transmitted for this purpose, or, upon request, shall notify specified persons of official acts of the other State. A request pursuant to this Article which requires a response or the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the response or the appearance is due.

Other Provisions

ARTICLE 20

Admissibility of Evidence

1. Information, evidence, or records of proceedings received pursuant to this Treaty shall be given the same probative value in the Requesting State as though the information, evidence, or records of proceedings had been produced by the authorities of the Requesting State.

2. A record authenticated in accordance with Article 14 of this Treaty shall be accepted into evidence in the Requesting State without additional proof of authenticity, provided that the record is otherwise admissible. When the genuineness of such a record is challenged by any person in an investigation, trial or proceeding, that person shall have the burden of establishing that the record is not genuine.

3. An object certified pursuant to Article 15 of this Treaty shall be accepted into evidence in the Requesting State without additional proof as to its condition at the time of its seizure, provided that the object is otherwise admissible.

4. Certificates and records prepared by the Central Authority of the Requested State pursuant to this Treaty shall be accepted into evidence in the Requesting State as proof of the facts stated therein without further demonstration of authenticity.

ARTICLE 21

Effect of Other Treaties and Domestic Laws

1. Assistance and procedures provided under this Treaty shall not prevent or restrict any assistance or procedure provided under other international conventions or arrangements or under the internal laws in the Contracting Parties.

2. In the event of conflict between the provisions of this Treaty and the internal laws in the Contracting Parties, preference shall be given to application of the provisions of the Treaty.

3. Provisions in internal laws in the Contracting Parties which impose restrictions on tax authorities concerning the disclosure of information shall not prevent the furnishing of this information to the Central Authorities or their designees in the execution of a request made under this Treaty.

ARTICLE 22

Ratification; Entry into Force; Denunciation

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Bogota as soon as possible.

2. This Treaty shall enter into force on the date of the exchange of the instruments of ratification.

3. Either Contracting Party may terminate this Treaty at any time by giving notice to the other Party and the termination shall be effective six (6) months after the date of receipt of such notice.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at Washington, in duplicate, in the English and Spanish languages, each text being equally authentic, this twentieth day of August, 1980.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Warren Christopher

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA:

Virgilio Barco

DEPARTMENT OF STATE,
Washington, August 20, 1980.

HIS EXCELLENCY VIRGILIO BARCO,
Ambassador of Colombia,

EXCELLENCY: I have the honor to refer to the treaty between the United States and the Republic of Colombia on Mutual Legal Assistance signed on August 20, 1980, and in particular to Article 14 thereof, and to bring to your attention the understanding of the United States Government with respect to that Article.

Article 14(1) provides that each Contracting Party may furnish the other with a record which is in the possession of a government agency in the Requested State and which is not available to the public in that State, provided that the Requested State deems it appropriate to do so.

Since the major purpose of the treaty is to extend as broad and comprehensive a range of mutual legal assistance as possible, the United States expects that it will be sparing in its exercise of the discretion to refuse assistance in accordance with this provision. However, it must be understood that examples of situations in which the United States might deem it inappropriate to disclose information in its government files would be where disclosure could cause harm to individuals cooperating in criminal investigations, or compromise voluntary sources of information crucial to governmental operations, or otherwise adversely affect the operations of the government or the administration of justice.

One area in which the United States would consider the disclosure of information generally inappropriate under Article 14(1) of the treaty deserves special mention. The disclosure of tax information, such as taxpayer returns or information relating thereto, is strictly limited under United States law since the proper operation of our tax laws depends on voluntary taxpayer cooperation. Accordingly, the United States will consider it appropriate to disclose such information only when requested to do so for the purpose of furthering the administration of the tax laws in Colombia, and only to persons, courts, or administrative agencies responsible for assessment, collection, litigation, or other functions under the tax laws of Colombia.

I would appreciate a letter from Your Excellency confirming that the understanding described above is also the understanding of the Government of Colombia.

Accept, Excellency, the renewed assurances of my highest consideration.

WARREN CHRISTOPHER,
Acting Secretary of State.

EMBASSY OF COLOMBIA,
Washington, August 20, 1980.

Hon. WARREN CHRISTOPHER,
Acting Secretary of State,
Washington, D.C.

EXCELLENCY: I have the honor to acknowledge receipt of Your Excellency's note dated August 20, 1980, which, when translated into Spanish, reads as follows:

[The Spanish translation of Acting Secretary Christopher's note agrees in all substantive respects with the original English text.]

I have the honor to confirm that the understanding set forth in your note accords with that of the Government of Colombia.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

VIRGILIO BARCO,
Ambassador of Colombia.

CERTIFICATION OF TRANSLATION

I hereby certify that the above translation bearing LS No. 99394 was prepared by the Division of Language Services of the Department of State and that it is a correct translation to the best of my knowledge and belief.

ANTHONY D. SIERRA,
Chief, Translating Branch.

Dated: September 3, 1980.

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